No. 96-1816

Supreme Court, U.S.
FILED
JUN 13 1997
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1996

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, JOY KIRSCHENBAUM, PETER VALLELY and JOHN K. DOLLARD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT,

Petitioners,

-v-

THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

BRIEF OF RESPONDENT STATE OF NEW YORK IN OPPOSITION

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Dated: June 11, 1997

THE REPORTER COMPANY AND THE WALTON REPORTER, INC.
181 Delaware Street, Walton, NY 13856—800-252-7181

(3282 – 1997)

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Counter Statement of Question Presented

Whether there is a federal question presented by a case in which petitioners, the only taxpayers situated in a school district in Suffolk County, New York, in which there is located a nuclear powered electrical generating facility, are being treated differently than other similarly situated taxpayers in Suffolk County, where the record reveals (1) that petitioners are being treated no differently than other similarly situated taxpayers in the State, and (2) that there is a rational basis to support the challenged statutory provisions which require the petitioner school district, whose taxpayers had benefitted from substantial tax reductions because of the presence of a nuclear powered electrical generating facility, to bear the burden for any necessary refunds for school district tax refunds, instead of the Town of Brookhaven, whose taxpayers had not so benefitted.

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Statement of the Case

The New York Real Property Tax Law provides that a school district is required to refund the amount of excess school taxes

paid when an assessment is reduced in tax certiorari proceedings. N.Y. Real Prop. Tax Law § 726(1)(c) (McKinney 1984). In 1980, statutory provisions relating to assessment and collection of taxes in Suffolk County, New York, were amended (1980 N.Y. Laws, c. 837) to provide that refunds of real property taxes in Suffolk County are to be borne by the towns and are not to be charged back to the school districts. In 1983, the Legislature again amended the Suffolk County Tax Act so that the 1980 amendment did not apply where the assessment in question "is applicable to property improved by a nuclear powered electrical generating facility". 1983 N.Y. Laws, c. 1018 (hereinafter "Chapter 1018"). Thus, those school districts in Suffolk County affected by Chapter 1018, like all other school districts in the State of New York subject to the general provisions of New York Real Property Tax Law § 726(1)(c), are required to refund the amount of excess taxes paid when an assessment is reduced in tax certiorari proceedings.

The Long Island Lighting Company ("LILCO"), in a proceeding brought in the New York Supreme Court, Suffolk County, succeeded in reducing the real property assessment for the 1976-77 through 1983-84 tax years, excluding the 1979-80 tax year, on the Shoreham Nuclear Power Station in the principal amount of $38,145,885 (48-49, 73-76, 79-85[1]). The Shoreham Nuclear Plant, the only nuclear powered electrical generating facility in Suffolk County, is located in the Shoreham-Wading River Central School District within the Town of Brookhaven. Thus, Chapter 1018 applies to petitioner school district as well as to the individual petitioners who are residents of that school district.

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[1]Numbers in parentheses refer to pages in the Record on Appeal filed with the Appellate Division, Third Department.

Petitioners commenced this action challenging Chapter 1018 alleging, *inter alia*, that Chapter 1018 of the Laws of 1983 is unconstitutional as a denial of equal protection (17).

REASONS FOR DENYING THE WRIT

Petitioners have made no attempt to demonstrate that this is a matter of concern for the nation's citizenry or that this matter presents an issue which has caused conflict among the federal Courts of Appeals. Nor is there a conflict with prior decisions of this Court. Instead, petitioners assert that the ruinous impact the challenged statutory provisions will have upon them indicates that the legislative classification employed is not rationally connected to the concededly legitimate State interest in preventing tax windfalls. This assertion not only is devoid of merit but sets forth no reason for this Court to grant the petition for a writ of certiorari.

Statutes that neither classify on the basis of a suspect class nor impair a fundamental right must be upheld if the challenged classification is rationally related to achievement of a legitimate governmental purpose. *See, e.g., Hodel v. Indiana*, 452 U.S. 314, 331 (1981). A statute does not violate equal protection of the laws merely because a classification made by the statute is imperfect, is not made with mathematical nicety, or in practice results in some inequality. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). With respect to tax statutes such as the one at issue here, the Equal Protection Clause of the Fourteenth Amendment allows the States wide latitude. *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

Petitioners have failed to establish that there is no rational basis for any difference in treatment.[2] To the contrary, the legislative history of Chapter 1018 clearly shows that the New York Legislature had a rational basis for the classification employed in the legislation. That legislative history was viewed by the Appellate Division as setting forth cogent reasons for the different treatment of Suffolk County school districts taxing a nuclear power generating facility which are rationally related to the achievement of a legitimate governmental purpose:

> In reaching this conclusion, we look first to the 1983 Amendment's stated purpose, which was to prevent school district taxpayers from reaping unwarranted windfalls. According to the Assembly memorandum in support of the legislation, nuclear-powered electric generating facilities create "tax havens" resulting in lower taxes for residents of school districts which contain them, and taxpayers not located in those tax havens "should not have to pay school tax refunds to the power facilities receiving assessment reductions" (Assembly Mem, Bill Jacket, L 1983, ch 1018). * * *

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[2]At the outset, we submit that petitioners are not being treated differently than other similarly situated taxpayers. As noted in the sponsor's memorandum of Chapter 1018, petitioners are the only taxpayers within Suffolk County who have benefitted from the lower tax rates resulting from the substantial tax revenues received from the Shoreham Nuclear Power Station. *See*, Petition, at 12 n.3. In contrast, in every other county in the State in which a nuclear power electrical generating facility is located, a school tax refund also must be paid by the school district and not the town. N.Y. Real Prop. Tax Law § 726(1)(c) (McKinney 1984). Thus, petitioners are treated no differently than any other taxpayers with a nuclear power electrical generating facility located within their school district.

> * * * The Legislature specifically found that nuclear-powered electric generating facilities "due to their high value, pay substantial taxes" (Assembly Mem, Bill Jacket, L 1983, ch 1018). As such, they created tax havens resulting in lower taxes in the school districts which contained them. Therefore, should a nuclear power facility ultimately be determined to be overassessed and entitled to a refund, the Legislature concluded that the other school districts should not be required to pay the refund, given that they did not share in the benefit of the initial overassessment. Given these facts, we are of the view that, in distinguishing nuclear power facilities from other types of property uses, the Legislature could rationally have assumed that if such facilities turned out to be overassessed, any tax refund would impose a greater tax windfall for school districts with such facilities if they did not have to pay the entire refund themselves.

Refuting petitioners' assertions that the legislative classification employed by Chapter 1018 is not rationally connected to the State's interest in preventing tax windfalls, the court further stated:

> Nor do we find the fact that there was only one school district actually affected by the 1983 Amendment to be fatal. If there had been more school districts in the same position as the District, the 1983 Amendment would still have applied. The statute did not, by its terms, single out or limit itself to only the District. * * *
>
> Likewise, we do not accept Supreme Court's conclusion that because the 1983 Amendment applied regardless of the amount determined to be owed as a refund

> (i.e., it applied whether the refund was $1 or $1 million), it violated equal protection principles. * * * [A]s it turned out, the refund determined to be owed was over $38 million. Under these circumstances, the Legislature was warranted in assuming, and as it turned out correctly so, that any refund owed would be substantial. * * *

Appendix, at 6a-7a.

It is apparent from the foregoing that the challenged legislation does "not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 446 (1985). To the contrary, the burdens imposed by Chapter 1018, regardless of the severity, are directly related to benefits previously bestowed. To the extent that petitioners have failed to demonstrate that this matter is of national importance or has any impact beyond the taxpayers in petitioners' school district, there is no reason for this Court to grant a writ of certiorari to review again such well-settled law.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Dated: Albany, New York
June 11, 1997

Respectfully submitted,

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